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IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (INCOME TAX)
ORIGINAL SIDE

ITAT/162/2023
IA NO: GA/1/2023, GA/2/2023
PRINCIPAL COMMISSIONER OF INCOME TAX – 2, KOLKATA
VS
M/S PRB SECURITIES PVT LTD. KOLKATA

BEFORE :
THE HON'BLE CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 26th July, 2023

<u>*Appearance*</u> :
Ms. Smita Das De, Adv.
...for appellant
Mr. Sukalpa Seal, Adv.
Ms. Priyamvada Singh, Adv.
...for respondent

The Court : - Heard learned counsel on either side.

It appears that there is a delay of 1514 days in filing the appeal. Though the reasons are assigned in the affidavit are not fully convincing, considering the fact that the respondent assessee has availed the benefit of the *Vivad Se Vishwas Scheme* of settlement and had also remitted the tax, we exercise discretion and condone the delay in filing the appeal.

This appeal filed by the revenue under Section 260A of the Income Tax Act, 1961, is directed against the order dated 5.12.2018 passed by the Income Tax Appellate Tribunal "C" Bench, Kolkata (the Tribunal) in ITAT/211/Kol/2017 for the assessment year 2013-14.

The revenue has raised the following substantial questions of law for consideration:-

a) Whether on the facts and in the circumstances of the case and in law, the disallowance made on bogus loss by the Assessing Officer on the basis of information from DDIT(Investigation) can be treated as predetermined and completely guided by the DDIT (Investigation) ?

b) Whether on the facts and circumstances of the case and in law, the disallowance of bogus donation on the basis of information from DDIT (Investigation) regarding rescind of CBDT's earlier Notification can be treated as predetermined and completely guided by the DDIT (Investigation)?

c) Whether on the facts and circumstances of the case and in law, the order of the Learned Income Tax Appellate Tribunal deleting the aforesaid disallowance/addition was perverse having regard to the evidence and material on record ?

After hearing the learned Advocates for the parties, we note that the respondent assessee has availed the benefit of *Vivad Se Vishwas Settlement Scheme* and the requisite form has been filed and the assessee has also remitted the tax of Rs.89,54,135/- as could be seen from the e-receipt for e-tax payment dated 16.02.2021. It appears that the Form-5 declaration has not been issued on account of pendency of the present appeal. In the light of the fact that respondent assessee has already availed the benefit of the settlement scheme and remitted the tax in question the appeal stands disposed of by directing the authorities to consider and issue Form-5 in accordance with the relevant provisions of the Act. Consequently, the substantial questions of law are left open.

Consequently, the connected applications stand closed.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)

Pkd/GH